
OPINION OF THE PUBLIC ACCESS COUNSELOR

EMMA E. HERBERT,
Complainant,

v.

CITY OF ANDERSON,
Respondent.

Formal Complaint No.
18-FC-136

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the City of Anderson violated the Access to Public Records Act.¹ City Attorney Timothy S. Lanane filed an answer to the complaint with this Office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on November 9, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute over access to supporting documentation for credit card purchases from the City of Anderson's Mayor's office.

The State Board of Accounts audited the City of Anderson for the period from January 1, 2017 to December 31, 2017. The SBOA, in its supplemental compliance report, noted that the City did not present supporting documentation for credit card purchases from the Mayor's office totaling \$13,851. As a result, the SBOA could not verify the purpose of the disbursements.

After the audit period, the SBOA again tested the accounts payable vouchers for the April 2018 credit card payments and again found purchases from the Mayor's office did not have supporting documentation totaling \$5,647.

In August 2018 the City offered an official response for inclusion in the SBOA's report. The City stated, in relevant part, the following:

The mayor's office does have available and did have available at the time of the audit the supporting documents for the credit card statements that were the subject of the audit. The records are available and kept in the office of the mayor.

On October 11, 2018, Emma E. Herbert emailed a public records request to Mayor Thomas Broderick, Jr. and City Controller Douglas A. Whitham seeking the following:

Copies of missing receipts, and/or invoices, travel forms; i.e. supporting documentation for

the credit card receipts from May, June, and October of 2017, as well as April of 2017.

The same day, Herbert also hand-delivered a request to the City attorney at a public meeting. Herbert followed up on October 23 and received an email update in return immediately thereafter wherein the City said her request was being processed. The City gave a self-imposed deadline of November 7, 2018 for fulfillment of the request. The City partially fulfilled the request on the 7th, however, it acknowledged the production of documents was incomplete because some of the materials were still in the process of being gathered.

Herbert takes exception to lack of fulfillment. A news report accompanying the complaint indicates that the Mayor suggested the receipts were in his office and intimated it was just a matter of retrieval. Subsequent reports, including the City's response, argues the receipts are still being gathered for the purpose of production and no denial of any material was issued. The production is an ongoing process.

The City denies that it violated APRA as alleged in the complaint. The City argues that it has not refused or denied Herbert's request and that the request itself was acknowledged in a timely manner.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The City of Anderson (“City”) is a public agency for purposes of APRA; and therefore, the City is subject to the requirements of the Act. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the City’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Under APRA, “public record” means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Here, the records requested by Herbert are public records for purposes of APRA; and thus, presumptively disclosable unless an exception to disclosure applies.

2. Timely Acknowledgement of Requests

Herbert takes exception to the timeliness of the production of documents. She seemingly infers a seven-day deadline for fulfillment of her request, however, this is not the case.

Indiana Code Section 5-14-3-9 states:

(b) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

(c) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.

This has long been interpreted to mean a public agency must provide a requester with an acknowledgment of a request within 24-hours or seven days, depending on the method of submission. This acknowledgement does not necessarily have to be in writing and there is no magic language that qualifies an acknowledgement to be sufficient.

In the majority of cases where a request is hand-delivered, the live person-to-person interaction can very well suffice as the acknowledgment and satisfies the 24-hour requirement. A public official or employee does not have to have a receipt on-hand to provide a requester with an immediate written bill of parcel.

And so it is in the current matter. Herbert submitted the public records request to a live person, the city attorney, and presumably had some kind of exchange in real-time. This satisfies the timeliness of the acknowledgment immediately without further follow-up.

The purpose of the acknowledgement, of course, is so that a requester can rest assured that their submission has been received and is being processed. It stands to reason that some may prefer a written receipt of that transaction. To the extent it is possible, a paper trail is always a recommended way to document public records requests, but it is not required – the in-person exchange is enough.

2.1 Reasonable Timeliness

Herbert also alleges a violation of the law took place because the City did not fulfill the entirety of the request by the City's self-imposed deadline of November 7, 2018.

Under APRA, an agency must make the requested records available for inspection or copying within a *reasonable time*. Ind. Code § 5-14-3-3(b)(emphasis added). While “reasonable time” has no set statutory definition, this Office projects a common sense standard in defining the term case-by-case.

One way of quantifying a reasonable time is to set a standard of producing the records as they become available. Therefore, producing the receipts in batches as they are gathered is not a deficient practice.

Complicating the issue, however, is the City's official response to SBOA and news report from October 11, wherein the City asserts that the missing documents are available and kept in the Mayor's office. This, of course, could set up an expectation of sorts on the part of a potential requester that the documents are at the ready. Therefore, a delay in production may lead to the perception that the public was misled in some way.

Subsequent media reports indicate the City is still in the process of gathering the receipts and making them available. To what extent Herbert has received anything beyond the initial batch of documents on November 7 is unknown, however, it is my sincere hope and expectation that the production continue until the request is complete.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Anderson has not violated the Access to Public Records Act provided they continue to provide documents until the request is fulfilled.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor